

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
LIQUIDATOR, IN SUPPORT OF MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH WRG ASBESTOS PI TRUST**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed Special Deputy Liquidator of the Home Insurance Company (“Home”), by the Insurance Commissioner for the State of New Hampshire, as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Settlement Agreement with WRG Asbestos PI Trust. The facts and information set forth are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. The motion seeks approval for the Settlement Agreement and Mutual Release (“Settlement Agreement”) between WRG Asbestos PI Trust (the “Trust”), as successor in interest to W. R. Grace & Co. (“Grace”¹), and the Liquidator. The Settlement Agreement was

¹ W. R. Grace & Co. and sixty-one other companies are the subject of a Chapter 11 bankruptcy proceeding, In re: W.R. Grace & Co., et al., Chapter 11 Case No. 01-1139 (Bankr. D. Del.), and they are the subject of a plan of reorganization that established the WRG Asbestos PI Trust. See id., Recommended Findings of Fact, Conclusions of Law and Order Regarding Confirmation of First Amended Joint Plan of Reorganization as Modified through December 23, 2010 (March 9, 2011); In re: W.R. Grace & Co. et al., Case No. 1:11-cv-00199-RLB (D. Del.), Order dated June 11, 2012 (confirming plan of reorganization). Under the plan, bodily injury asbestos claims against Grace were assumed by the Trust, which is to resolve and pay asbestos claims pursuant to certain claim resolution procedures, and Grace was discharged from those claims. The plan included a channeling injunction which directs all asbestos claims against Grace to the Trust and an asbestos entity injunction which generally enjoins the assertion of claims against settling insurers of Grace.

negotiated under my supervision. A copy of the Settlement Agreement is attached as Exhibit A to the Liquidator's motion.

3. Home issued seventeen insurance policies to Grace for various policy periods between October 20, 1962 and June 30, 1985. Settlement Agreement, first Whereas clause. Upon Home's placement in liquidation, Grace filed twelve proofs of claim in the Home liquidation, including claims for coverage for asbestos-related bodily injury claims. Settlement Agreement, third Whereas clause. The Trust is the successor in interest to Grace as respects insurance coverage for asbestos-related bodily injury liabilities.²

4. The Liquidator and the Trust have negotiated the Settlement Agreement reflecting a resolution of the proofs of claim and all matters under the policies. The Settlement Agreement is subject to approval by the Court. Settlement Agreement ¶ 1.

5. The Settlement Agreement provides that the Liquidator will recommend allowance of the proofs of claim in the aggregate amount of \$73,000,000 as a Class II priority claim of the Trust under RSA 402-C:44. Settlement Agreement ¶ 2(A). Allowance of the recommended amount as a Class II claim will fully and finally resolve the proofs of claim and all claims the Trust has under the policies. *Id.* ¶2(B). Distributions based on that allowance will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home. *Id.* ¶ 2(C).

6. The Settlement Agreement is intended to resolve the proofs of claim and all claims that the Trust has under the policies. See Settlement Agreement ¶ 2(B). To that end, the Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home and the Trust arising from or related to the proofs of claim or the policies. *Id.* ¶¶ 3, 4. The

² Although the Trust is the successor to Grace only with respect to Grace's asbestos-related bodily injury liabilities, the only proofs of claim filed by Grace in the Home liquidation proceeding relate to asbestos claims.

Liquidator also releases claims respecting the underlying matters covered by the proofs of claim against other insurers of the Trust that agree to release such claims against Home. *Id.* ¶ 6. The Trust also agrees to use best efforts to seek the bankruptcy court's designation of Home as a protected party under the bankruptcy court's channeling injunction portion of the Trust's plan of reorganization. *See* fn. 1; Settlement Agreement ¶ 7. Finally, the Trust agrees to reduce collection from any insurer to the extent necessary to extinguish any liability that the Liquidator or Home may have to such insurer. Settlement Agreement ¶ 8.

7. The Liquidator is not aware of any third party claimants asserting claims under the policies.³ However, in resolving all matters relating to the proofs of claim and the policies, the Settlement Agreement contemplates denial of any third party claimants' claims under the policies in the Home liquidation without prejudice to their claims against the Trust.

Accordingly, the Trust acknowledges in the Settlement Agreement that it is intended to resolve all matters between the Trust and the Liquidator/Home relating to the proofs of claim and the policies, including asserted rights of third party claimants. Settlement Agreement, ¶ 5. The Trust agrees to address, at its sole cost, the claims of claimants asserting claims against the Trust as if the Trust had no insurance coverage from Home under the policies. *Id.* The Trust agrees to indemnify the Liquidator and Home against claims arising from the policies by paying up to the amounts distributed to the Trust or by offset against subsequent distributions from the Trust. *Id.*

8. The denial of any third party claimants' proofs of claim without prejudice to their claims against the Trust will not harm the third party claimants, whose claims have been channeled to the Trust and who will continue to have their claims against the Trust. As noted


³ Two other insurers of Grace have submitted proofs of claim concerning contribution claims in respect of the policies. Unlike third party claimants' claims, a contribution claim is independent of the insured's claims (although derived from the same underlying circumstances), and it will be determined under applicable law in the liquidation proceeding.

above, the Trust has agreed to address these claims as if it had no insurance coverage from Home under the policies, Settlement Agreement ¶ 5, although payment of these claims can only be made in accordance with the bankruptcy plan and Trust. Third party claimants' proofs of claim against the insolvent Home, if not denied with this agreement, would release the Trust from those claims up to the limits of the policies but only entitle the third party claimants (assuming their claims were allowed) to the 15% interim distribution and any later distribution at a presently undetermined percentage at the future date when distribution is made. It is not expected that the allowed claims of any third party claimants (or other Class II creditors) of Home will be paid in full. Under the Settlement Agreement, the Trust will continue to be responsible for any third party claimants' claims against it accordance with the terms of the Trust and the provisions of Grace's bankruptcy plan. See Settlement Agreement ¶ 5.

9. The Settlement Agreement reflects a compromise of the claims asserted in the proofs of claim. It is the result of negotiations involving the Claims Department, under my supervision, which has extensive experience in assessing the exposure presented by claims under Home's insurance policies. The agreed settlement amount is based on careful evaluation and negotiation of coverage obligations under Home's policies respecting the underlying liabilities of the Trust. The Liquidator accordingly recommends approval of the Settlement Agreement and allowance of the \$73,000,000 settlement amount as a Class II claim of the Trust in accordance with RSA 402-C:45 and RSA 402-C:44.

10. I believe that the Settlement Agreement is fair and reasonable and in the best interests of the policyholders and creditors of Home.

Signed under the penalties of perjury this 1ST day of December, 2014.




Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

On DECEMBER 1, 2014 before me, CLAUDIA A. KING-NOTARY PUBLIC, personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
Signature of Notary Public

